

(a) *Declaration of Findings and Policy.* – Amended May 10, 2011 - 9595

The city of Worcester, acting by and through its City Council, hereby makes the following findings:

- (1) There exists conclusive and voluminous evidence that tobacco causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat;**
- (2) The surgeon general has determined that nicotine is a powerfully addictive drug;**
- (3) There are an estimated 31,265 smokers who reside in the city of Worcester;**
- (4) 23.7% of adults in the city of Worcester over 18 years of age smoke, a level which is 47% higher than the statewide average of 16.1%;**
- (5) Cigarette smoking among middle-aged residents (age 45-64) is at the 23.7% level, which is 42% higher than the statewide level of 16.7%;**
- (6) Tobacco causes an estimated 438,000 deaths annually in the United States and over 8,000 deaths annually in the commonwealth of Massachusetts;**
- (7) The death rate of Worcester residents from tobacco on a per capita basis is approximately 250 individuals annually, or five human lives lost per week;**
- (8) At least one-half of all smokers begin smoking before the age of eighteen and an estimated 3,000 minors begin smoking every day in the United States;**
- (9) Despite a progression of federal laws, state laws and city ordinances enacted over the past several decades which prohibited the sale of tobacco products to minors, required warning labels on cigarette packages, prohibiting television and radio advertising of tobacco products, prohibited the distribution of free cigarettes, prohibited smoking in public places, prohibited smoking in restaurants, prohibited smoking in workplaces and buildings, prohibited vending machine sale of tobacco products, required tobacco sales permits, and, despite the initiation and settlement of lawsuits against tobacco companies where these companies have paid and continue to pay hundreds of billions of dollars to compensate all state governments, the District of Columbia, Puerto Rico and the Virgin Islands, for the damages caused by tobacco products, the marketing strategies continue and the rampant use of tobacco products and the death and devastation resulting therefrom continue at the epidemic levels described herein;**
- (10) Tobacco is currently sold in health care institutions, such as pharmacies and drug stores, and at educational institutions in retail stores, and retail establishments continue to bombard the public with cigarette and tobacco product advertising;**
- (11) The sale of tobacco products is incompatible with the mission of health care institutions because it is detrimental to the public health and undermines efforts to educate patients on the safe and effective use of medication;**
- (12) There are certain tobacco products such as blunt wraps that are frequently marketed and sold to the youth and are also known to be used as drug paraphernalia;**

Now, Therefore, the city council of the city of Worcester, in recognition of the death and devastating effects of tobacco products on the residents of the city of Worcester, is compelled to exercise the authority granted it under its city charter to protect and promote the public health and the authority granted it by the Federal Family Smoking Prevention

and Tobacco Control Act of 2009, P.L. 111-31, to ban the sale of tobacco products and blunt wraps in health care institutions in the city of Worcester and restrict the advertising of tobacco products to reduce the number of smokers and consequential death and human suffering in the city of Worcester.

(b) *Definitions.* For purposes of this section the following words and phrases shall have the following meanings:

blunt wrap* - cigarette-like rolling paper that is thick and dark and usually made from tobacco leaves. Blunt wraps come in flavored varieties and are heavily marketed to the youth and often used as drug paraphernalia.

business agent – shall mean an individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

commissioner – shall mean the commissioner of public health of the city.

educational institution* - any public or private college, normal school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

employee – shall mean any individual who performs a service for compensation for an employer at the employer's workplace and as otherwise defined in section twenty-two (a) of chapter two hundred seventy of the General Laws.

employer – shall mean any individual, partnership, association, corporation, trust or other organized group of individuals, including the city of Worcester or any agency or authority thereof, which uses the services of one (1) or more employees and as otherwise defined in section twenty-two (a) of chapter two hundred seventy of the General Laws.

health care provider* – An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services or employs health care providers licensed, or subject to licensing, by the Massachusetts department of public health under chapter 112 of the General Laws. Health care provider includes hospitals, clinics, health centers, pharmacies, drug stores and doctor and dentist offices.

minor – shall mean any individual who is under the age of eighteen.

permit – shall mean the tobacco product sales permit issued by the commissioner pursuant to this ordinance.

permit holder – shall mean any retailer, or such retailer's business agent, who applies for and receives a permit pursuant to this ordinance, or the regulations adopted by the commissioner.

person – shall mean any individual, company, partnership, corporation, association, or other legal entity.

regulations – shall mean other regulations adopted by the commissioner pursuant to this ordinance and/or pursuant to section thirty-one of chapter one hundred and eleven of the General Laws.

Retail tobacco store* - an establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental (not more than 20% of gross sales), and in which the entry of persons under the age of 18 is prohibited at all times, and which maintains a valid tobacco sales permit.

retailer – shall mean any person who is the owner or operator of any establishment in the business of selling or distributing tobacco products.

self-service display – shall mean any display of tobacco products which is so located such that said products are accessible to customers without assistance from an employee or store personnel.

***Smoking bar* - an establishment that occupies exclusively an enclosed indoor space and that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises; derives revenue from the sale of food, alcohol or other beverages that is incidental (not more than 20% of gross sales) to the sale of the tobacco products; prohibits entry to a person under the age of 18 years of age during the time when the establishment is open for business; prohibits any food or beverage not sold directly by the business to be consumed on the premises; maintains a valid tobacco sales permit; and, which maintains a valid permit to operate a smoking bar issued by the department of revenue. ***

tobacco products – shall mean cigarettes, cigars, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

vending machine – shall mean any automated, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.

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(c) *Smoke Free Workplace/Municipal Buildings.* Smoking is hereby prohibited in the municipal buildings and workplaces located the city of Worcester in accordance with section twenty-two of chapter two hundred seventy of the General Laws (commonly known as the “Massachusetts Smoke-free Workplace Law”). For the purposes of this section, municipal buildings shall include any building owned or leased by the city of Worcester, its agencies and authorities, including, but not limited to, City Hall, Union Station and all city libraries. Any person who violates the provisions of this subsection shall be fined \$25.00.

(d) *Smoking Prohibited at Certain Entrances and Exits.* Smoking is also hereby prohibited in the following:

- (1) Smoking shall be prohibited within fifty (50) feet of all municipal building entrance and exit ways, except that this prohibition shall not apply to an individual transiting through such fifty (50) foot area or to an individual approaching an entranceway

with the intention of immediately extinguishing a tobacco product. For the purposes of this section, municipal buildings shall include any building owned or leased by the city of Worcester, its agencies and authorities, including, but not limited to, City Hall, Union Station and all city libraries. Any person who violates the provisions of this subsection shall be fined \$25.00.

- (2) Smoking shall be prohibited in the area within fifty (50) feet of any entrance and exit way of a health care provider, except that this shall not apply to an individual transiting through such fifty (50) foot area or to an individual approaching an entranceway with the intention of extinguishing a tobacco product. Any person who violates the provisions of this subsection shall be fined \$25.00.***

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(e) *Smoking Bars.* Smoking is also hereby regulated in the following:

- (1) The operation of a “smoking bar”, as defined in section twenty-two of chapter two hundred seventy of the General Laws, which includes but is not limited to those establishments that are commonly known as “cigar bars” and “hookah bars” shall (a) comply with the terms and conditions set out in any regulations promulgated by the commissioner to promote public health and the health of patrons using the services of a smoking bar, (b) prohibit the entry of minors at all times, (c) maintain a valid permit issued by the commissioner, or a designee, and (d) post signs at conspicuous locations warning patrons of the dangers of environmental tobacco smoke in the manner and form specified by the commissioner, or a designee, at all entrances and on all tobacco selection menus.

(f) *Sales to Minors Prohibited.*

- (1) No retailer shall sell, attempt to sell, or otherwise distribute or attempt to distribute a tobacco product to a minor.
- (2) No retailer shall sell or permit the sale of tobacco products unless the location at which the tobacco products are available for purchase is posted with a notice at least six inches by eight inches in size which is clearly visible to anyone purchasing such products and which states:

“Whoever sells a cigarette, chewing tobacco, snuff or any tobacco in any of its forms to any person under the age of eighteen or, not being his parent or guardian, who gives a cigarette, chewing tobacco, snuff or tobacco in any of its forms to any person under the age of eighteen (18) shall be punished by a fine of not less than one hundred (\$100) dollars for the first offense, not less than two hundred (\$200) dollars for a second offense and not less than three hundred (\$300) dollars for any third or subsequent offense.”

Said notice must be posted in compliance with G.L. c. 270, §§ 6 & 7 and shall be available upon request from the commissioner, or a designee.

- (3) Each retailer selling or distributing tobacco products shall verify the age of the purchaser by means of valid government-issued photographic identification showing the purchaser is not a minor. Verification is required for any person under the age of twenty seven (27).

(g) *Sale and Distribution of Tobacco Products Regulated*

- (1) No retailer may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.
- (2) All self-service displays of tobacco products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked. The only exception is self-service displays that are located in facilities where the retailer ensures that no minor is present, or permitted to enter, at any time.
- (3) No retailer shall sell, attempt to sell, or otherwise distribute tobacco products in any building or facility owned or operated by the city.
- (4) No retailer shall distribute, or cause to be distributed, any free samples of tobacco products.
- (5) **Notwithstanding any other provision of these ordinances, no health care provider shall sell tobacco products or cause or allow tobacco products to be sold on its premises. No retail establishment that operates maintains or employs a health care provider within it, such as a pharmacy or drug store, shall sell tobacco products or cause tobacco products to be sold.***
- (6) **No educational institution shall sell or cause to be sold tobacco products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.***
- (7) **No retail establishment or entity shall sell or cause to be sold blunt wraps.***

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(h) *Tobacco Sales Permit*

- (1) No retailer shall sell or otherwise distribute tobacco products within the city of Worcester without first obtaining a permit issued by the commissioner, or a designee. Only owners of establishments with a permanent, non-mobile location in Worcester are eligible to apply for a permit and sell tobacco products at a specified location in Worcester. The commissioner, or a designee, shall issue a permit to any applicant only after determining that the applicant demonstrates compliance with this ordinance and any regulations the commissioner may adopt to implement this ordinance.

- (2) As part of the permit application process, the applicant will be provided with this ordinance. Each applicant is required to sign a statement declaring that he or she has received the ordinance and agrees to be responsible for instructing all employees engaged in tobacco product sales about state law governing tobacco product sales and this ordinance. No permit holder shall allow any employee to sell tobacco products until the employee acknowledges, in writing, receipt of this ordinance and the state law regarding the sale of tobacco, a copy of which will be placed on file in the office of the employer.
- (3) Each applicant shall provide the commissioner with proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a permit may be issued.
- (4) The commissioner, or a designee, shall issue permits to any applicant only after the commissioner, or a designee, determines that the application is in compliance with this ordinance and any rules or regulations the commissioner may adopt to implement this ordinance. The first permit issued to any applicant shall be an “initial” permit, which shall expire on the thirty-first day of December next after the date of issuance. Thereafter, permits issued shall be an “annual” permit which shall be valid for one calendar year beginning on the first day of January and ending on the thirty-first day of December. The “annual” permit is renewable to the same permit holder each year by the thirty-first day of December upon receipt of an application in compliance with this ordinance and the applicable rules and regulations. Any permit holder that fails to renew a permit by the thirty-first day of December and continues to operate may be subject to penalty and enforcement under this section.
- (5) A separate permit is required for each retail establishment selling tobacco products.
- (6) Each permit shall be displayed at the retail establishment in a conspicuous location and consistent with rules and regulations which the commissioner may adopt.
- (7) No permit shall be transferable, except as set forth in this Chapter 8. Permits holders shall have no property interest in a permit.
 - (A) Permits may be transferred incident to the relocation of a retail establishment by the existing permit holder upon prior written notification to the commissioner of the relocation and any change in address.
 - (B) Permits may be transferred incident to the sale of an existing permitted retail establishment to a new owner at the same location upon application to the commissioner.
 - (C) No existing permit may be transferred by subsection (A) or (B) unless and until all requirements of this ordinance and any regulations are satisfied and any outstanding penalties are satisfied in full.
- (8) A permit will not be renewed if the permit holder has failed to pay any outstanding fines.

(i) *Additional Prohibitions – Amended May 10, 2011 - 9595*

- (1) No person shall display any advertising that promotes or encourages the sale or use of cigarettes, blunt wrap or other tobacco products in any location where any such advertising can be viewed from any street or park shown on the Official Map of the city or from any property containing a public or private school or property containing an educational institution; provided however, that nothing in this provision shall prevent a “retail tobacco store” or a “smoking bar” from displaying advertising promoting their business, including their location and hours of operation, in any manner which would otherwise be prohibited by this subsection so long as no such advertising contains any brand name, brand or corporate insignia, trade mark or trade name of any cigarette product, producer or distributor.**
- (2) All tobacco vending machines are prohibited in the city of Worcester.**

(j) *Penalties and Enforcement*

- (1) Any person who violates the provisions of the following subsections of this ordinance: (g)(5)(health care provider sales ban); (g)(6)(educational institution sales ban); (h)(1)(tobacco sales permit requirement); and, (i)(1)(advertising ban), shall be punished by a fine of three hundred dollars (\$300.00) for each violation. Every day or part thereof in which any person is in violation of these provisions shall constitute a single and separate offense.***

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- (2) Any retailer who violates any provision of this ordinance other than subsection (c)-(e) or (h)(1) shall pay:**
 - (A) In the case of a first violation, a fine of one hundred dollars (\$100.00).**
 - (B) In the case of a second violation within twenty-four (24) months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the permit may be suspended for seven (7) consecutive business days.**
 - (C) In the case of three or more violations within a twenty-four (24) month period, a fine of three hundred dollars (\$300.00) and the permit may be suspended for thirty (30) consecutive business days.**
- (3) The commissioner, or a designee, shall provide notice of the intent to suspend a permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing before the commissioner, or a designee. The permit holder shall be notified of the commissioner’s decision and the reasons therefore in writing. After a hearing, the commissioner may suspend the permit if the commissioner finds that a sale to a minor occurred or pursuant to subsection 2(C) above. For purposes of such**

suspensions, the commissioner shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the General Laws for the same offense. All tobacco products shall be removed from the retail establishment upon suspension of the permit. Failure to remove all tobacco products shall constitute a separate violation of this ordinance.